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FILED

OCT 15 2013

SECRETARY, BOARD OF
OIL, GAS & MINING

**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

In the Matter of the Petition by the
Division of Oil, Gas and Mining for an
Order:

- (1) Withdrawing Bryce H. Haas's
Notice of Intention to Commence
Small Mining Operations at the
B&H Quarry, S/039/0020, located
in portions of the east half of
Section 5, Township 20 South,
Range 2 East, SLBM, Sanpete
County, Utah;
- (2) Forfeiting Bryce H. Haas's surety
for the B&H Quarry;
- (3) Authorizing the Division to
complete reclamation at the B&H
Quarry; and
- (4) Granting such further relief as the
Board may deem just and
reasonable under the circumstances.

NOTICE OF AGENCY ACTION

Docket No.: 2013-038
Cause No.: S/039/0020

RELIEF SOUGHT

The Division of Oil, Gas and Mining ("Division"), through its attorneys, hereby petitions the Utah Board of Oil, Gas and Mining ("Board") for an Order: (1) withdrawing Bryce H. Haas's Notice of Intention to Commence Small Mining Operations at the B&H Quarry, S/039/0020, located in portions of the east half of Section 5, Township 20 South, Range 2 East, SLBM,

Sanpete County, Utah; (2) authorizing the Division to complete reclamation at the B&H Quarry; (3) forfeiting Bryce H. Haas's surety for the B&H Quarry; and (4) granting such further relief as the Board may deem just and reasonable under the circumstances.

JURISDICTION

1. This action is brought by the Division pursuant to its authority to enforce the provisions of the Utah Mined Land Reclamation Act ("Act"), Utah Code §§ 40-8-1 et seq.

2. Utah Code § 40-6-5 grants to the Board "jurisdiction over all persons and property necessary to enforce this chapter."

3. Utah Code § 40-8-6(2) confers jurisdiction over this matter to the Board and empowers the Board "to hold hearings and to issue orders" as may be necessary to enforce the provisions of the Act.

NOTICE REQUIREMENTS

4. The Board hearing will be held on December 4, 2013 at 9:00 a.m. in the auditorium of the Department of Natural Resources, 1594 West North Temple, Salt Lake City, Utah.

5. The Board hearing will be conducted formally according to the provisions of Utah Code §§ 63G-4-204 to 63G-4-209.

6. The Respondent or other persons with an interest in this matter may file a written response with the Board within 20 days of mailing of this Notice of Agency Action. Any party who fails to respond or to appear at said hearing may be held in default.

7. The name and addresses of all persons to whom Notice of Agency Action shall be given are attached as the Certificate of Service and by this reference incorporated herein.

STATEMENT OF FACTS

8. On September 3, 2007, Bryce H. Haas submitted to the Division a Notice of Intention to Commence Small Mining Operations ("2007 NOI"). *See* Exhibit A. The 2007 NOI incorrectly

indicated the mine was located in Section 32, Township 19 South, Range 2 East, SLBM, Sanpete County, Utah. *See* Exhibit A at 4. The mine was named “Mayfield Quarry.” *See* Exhibit A at 1.

9. After submitting the 2007 NOI, but before receiving approval of it, Mr. Haas began mining and exploration activities at the Mayfield Quarry. Several acres were disturbed at the mine site.

10. On January 18, 2008, the Division sent a letter to Mr. Haas explaining that the 2007 NOI was incomplete due to several deficiencies. *See* Exhibit B. The letter from the Division further explained:

Reclamation surety is required to be posted by all mining and exploration operations. The surety amount determined for this site is \$20,700.00. . . . Since your exploration notice for this site has expired (exploration notices expire on November 30th, the year after the notice is submitted), there is to be no further mining or exploration activity at this site until a reclamation surety is provided. Continued operations may result in formal enforcement action being taken by the Division. Reclamation work only may continue until the Notice is complete and the surety approved.

See Exhibit B at 2 (emphasis in original).

11. Even though Mr. Haas was notified that the 2007 NOI was incomplete and that the exploration notice for the Mayfield Quarry had expired, he continued mining activities at the Mayfield Quarry before receiving an approved NOI or a permit from the Division. Mr. Haas made no attempt to reclaim the disturbed acreage at the mine site.

12. On or about December 21, 2009, the Division discovered that Mr. Haas had been conducting additional mining activities at the Mayfield Quarry without an approved NOI, without a permit, without a reclamation contract, and without posting a reclamation surety. The Division sent a certified letter to Mr. Haas informing him that he would need to reclaim the Mayfield Quarry by March 31, 2010 or submit a reclamation surety in the amount of \$20,700.00. *See* Exhibit C. Mr. Haas did not claim the letter, and the letter was returned to the Division. *See* Exhibit D.

13. On May 3, 2010, the Division issued a Cessation Order (“2010 CO”)¹ to Mr. Haas for violating Utah Code 40-8-13 and Utah Admin. Code R647-3-101(1). *See* Exhibit E. The 2010 CO ordered Mr. Haas to cease all mining activities at the Mayfield Quarry. It also directed Mr. Haas to submit a completed NOI, provide a reclamation surety—now in the amount of \$25,000,² and execute a reclamation contract with the Division. In the alternative, Mr. Haas could complete reclamation of the site. Compliance was required by June 3, 2010. *See* Exhibit E.

14. On May 5, 2010, shortly after receiving the 2010 CO, Mr. Haas requested a Stop Work Conference to discuss the matter with the Division.

15. On May 12, 2010, a Stop Work Conference was held at the Mayfield Quarry in Sanpete County, Utah. *See* Exhibit F at 1. The Hearing Officer assigned for the Stop Work Conference was Dana Dean, Associate Director for the Division. *See* Exhibit F at 1. In attendance for the Division were Paul Baker (Minerals Program Manager) and John Rogers (Environmental Scientist). *See* Exhibit F at 1. Also in attendance were Mr. Haas and Mr. Bill Christiansen (landowner). *See* Exhibit F at 1.

16. At the hearing, Mr. Haas indicated that he did not have enough money to post a reclamation surety. *See* Exhibit F at 2. He explained that he would have to sell the product he already had extracted, and also mine and sell additional material in order to come up with the money. *See* Exhibit F at 2. In addition, Mr. Christiansen indicated that he wanted mining to continue on the property.³ *See* Exhibit F at 2.

17. On May 17, 2010, after considering the evidence presented at the Stop Work Conference, the Hearing Officer issued the Findings, Conclusions, and Order in the matter (the “Stop Work

¹ Citation No. MC-2010-61-01.

² Pursuant to Utah Admin. Code R647-3-111(6), the Division is authorized to determine and adjust bond amounts. From time to time, bond amounts will increase based on certain factors such as inflation and risk.

³ Mr. Christiansen also indicated that he wanted some of the equipment left on the property after reclamation, and wanted the road and pad area to remain after the conclusion of mining. *See* Exhibit F at 2.

Order”). *See* Exhibit F. The Hearing Officer upheld the 2010 CO, but made the following allowances: Mr. Haas could (1) “transport and sell any on-site product already packaged for sale[;]” and could (2) “package and transport any loose product.” *See* Exhibit F at 3 (emphasis in original). The Stop Work Order made clear that “Mr. Haas may not loosen any rock, and may not advance the face” except for a small corner area that could be squared up. *See* Exhibit F at 3.

18. The Stop Work Order declared that the CO would be fully terminated when either (1) reclamation surety of \$25,000.00 was posted along with a completed NOI and a signed reclamation contract; or (2) reclamation was complete at the site. *See* Exhibit F at 3. In the event Mr. Haas failed to fulfill one of these two requirements by June 3, 2010, he would be subject to a \$750 per day fine. *See* Exhibit F at 3.

19. On June 2, 2010—one day before compliance with the CO and Stop Work Order was due—Mr. Haas submitted to the Division a new Notice of Intention to Commence Small Mining Operations (“2010 NOI”). *See* Exhibit G. The 2010 NOI changed the name of the mine to the “B&H Quarry,” located in Section 32, Township 19 South, Range 2 East, Sanpete County, Utah.⁴ It listed the operator as Mr. Haas, a sole proprietor. *See* Exhibit G at 1, 4-5.

20. Also on June 2, 2010, Mr. Haas also executed a Small Mine Reclamation Contract and provided a \$10,000.00 check as a portion of the reclamation surety required for the project. *See* Exhibit H. The \$10,000.00 check was deposited with the Utah State Treasurer on June 8, 2010 for the benefit of the Division in an interest-bearing escrow account at Zion’s First National Bank, Account No. 8912020. *See* Exhibit I.

21. On June 28, 2010, the Division approved the 2010 NOI. *See* Exhibit G. On June 29, 2010, the Division issued a permit for the B&H Quarry under several conditions. *See* Exhibit J.

⁴ As the map attached to the Notice of Intention indicates, the mine is actually located in Section 5, Township 20 South, Range 2 East, SLBM, Sanpete County, Utah. This is the same mine site as the Mayfield Quarry indicated in the 2007 NOI.

Page two of the permit provided: “Since the \$10,000 surety bond was posted on June 2, 2010, you may mine the ‘corner’ and square up the face as described in the . . . Stop Work Order. *The mine may not advance any further until the full reclamation surety is posted. The reclamation of the previous disturbance must be completed immediately.*” See Exhibit J at 2 (emphasis added).

22. On April 14, 2011, the Division issued a Failure to Abate Cessation Order (“2011 FTACO”)⁵ to Mr. Haas for failing to properly abate the 2010 CO. See Exhibit K. The 2011 FTACO ordered Mr. Haas to either (a) properly permit and provide adequate surety for the B&H Quarry; or (b) complete reclamation of the mine site.⁶ See Exhibit K.

23. Also on April 14, 2011, the Division issued a Proposed Assessment for the 2010 CO. See Exhibit L. The Assessment Officer, Lynn Kunzler, noted that ***“[a]pproximately 7.5 acres have been disturbed by this operation. The operator has been operating a mining operation for about 2.5 years after the Division had notified him in writing that there was to be no additional mining operations until the site was properly permitted and bonded.”*** Exhibit L at 4 (emphasis in original). The Assessment Officer explained that Mr. Haas ***“had received both written and verbal warnings regarding the need to have this site permitted and bonded in order to conduct operations. The operator also had 2 other quarries permitted with the Division. Conducting or continuing operations at this site demonstrates a high degree of negligence.”*** Exhibit L at 4 (emphasis in original). The Assessment Officer determined a penalty of \$3,740.00. See Exhibit L at 4.

24. The Assessment Officer advised Mr. Haas that he could request review of either the fact of the violation, the proposed penalty, or both, as long as a request for an informal conference was made within 30 days—by May 16, 2011. See Exhibit L at 1-2.

⁵ Citation No. MC-2011-65-01.

⁶ The FTACO did not provide an abatement deadline.

25. Mr. Haas did not request a formal or informal review of either the fact of the violation or the proposed penalty by May 16, 2011.

26. On August 15, 2011, the Division received notice that Mr. Haas filed for Chapter 7 Bankruptcy in the United States Bankruptcy Court for the District of Utah. *See* Exhibit M.

27. On December 1, 2011, the Division received notice that Mr. Haas had been granted a discharge in the bankruptcy proceedings. *See* Exhibit N.

COUNT I
(Withdraw Notice of Intention)

28. The Division hereby incorporates the allegations of paragraphs 1-27 hereof and further alleges as follows:

29. Utah Code § 40-8-16(2)(a) authorizes the Board to withdraw a NOI if “the operator substantially fails to perform reclamation[.]”

30. Utah Code § 40-8-16(2)(b) authorizes the Board to withdraw a NOI if “the operator fails to provide and maintain surety as may be required under this chapter.” *Accord* Utah Admin. Code R647-3-102 and R647-3-111.

31. As of this date, Mr. Haas has substantially failed to perform reclamation and has failed to provide and maintain adequate reclamation surety.

32. The Division ordered Mr. Haas to complete reclamation or provide adequate reclamation surety on five separate occasions: (1) the January 18, 2008 letter; (2) the 2010 CO issued May 3, 2010; (3) the Stop Work Order issued May 17, 2010; (4) the conditional permit issued June 28, 2010; and (5) the FTACO issued April 14, 2011.

33. Mr. Haas did not respond to the January 18, 2008 letter and did not post any reclamation surety. Rather, he simply continued mining.

34. After the Division issued the 2010 CO, Mr. Haas requested a Stop Work Conference. As

a result of that hearing, the Stop Work Order was issued which required either reclamation or the posting of a \$25,000.00 reclamation bond. Mr. Haas did not reclaim the site or post a \$25,000.000 reclamation bond. Rather, he submitted a partial bond of \$10,000.

35. On June 28, 2010, the Division issued a conditional permit and again requested that Mr. Haas complete reclamation of the disturbed acreage. The Division advised Mr. Haas that if he wished to mine further he would have to post a full \$25,000.00 reclamation surety.

36. By April 2011, Mr. Hass still had not reclaimed the site or posted full reclamation surety. Therefore, the Division issued the FTACO which demanded that Mr. Haas either reclaim the site immediately or post full reclamation surety. Mr. Haas did not respond to the FTACO, and filed bankruptcy later that year.

37. As of the date of this Notice of Agency Action, Mr. Haas has not reclaimed the site or posted a full reclamation surety of \$25,000.00.

38. Therefore, NOI S/039/0020 should be withdrawn.

COUNT II
(Forfeit Surety)

39. The Division hereby incorporates the allegations of paragraphs 1-38 hereof and further alleges as follows:

40. Utah Code Ann. § 40-8-14(6)(a) provides that “[i]f an operator of a mining operation fails or refuses to carry out the necessary land reclamation as outlined in the approved notice of intention, the board may, after notice and hearing, declare any surety filed for this purpose forfeited.” *Accord* Utah Admin. Code R647-3-112(3).

41. Mr. Haas has failed or refused to carry out the necessary land reclamation work as outlined in the 2010 NOI and conditional permit, despite repeated requests from the Division to reclaim the site.

42. Mr. Haas's inaction indicates that he no longer has the intent or resources to continue mining operations at the Mayfield/B&H Quarry or to honor his contractual and statutory obligations to reclaim the site.

43. Therefore, the Board should declare Mr. Haas's reclamation surety for the Mayfield/B&H Quarry forfeited to the Division, specifically the deposit totaling \$10,000.00, plus interest, held by the State of Utah for the benefit of the Division at Zion's First National Bank, Account No. 8912020.

COUNT III
(Authorize Division to Complete Reclamation)

44. The Division hereby incorporates the allegations of paragraphs 1-43 hereof and further alleges as follows:

45. Utah Admin. Code R647-3-112(1) provides that "[i]f the operator of a small mining operation fails or refuses to conduct reclamation as required by the complete notice of intention, and fails or refuses to comply with R647-3-107 [Operation Practices], R647-3-108 [Hole Plugging Requirements], or R647-3-109 [Reclamation Practices], the Board may, after notice and hearing, order that: (1) Reclamation be conducted by the Division"

46. Mr. Haas has failed or refused to conduct reclamation work as required by the 2010 NOI and conditional permit, despite repeated requests from the Division to reclaim the site.

47. Mr. Haas's inaction indicates that he no longer has the intent or resources to continue mining operations at the Mayfield/B&H Quarry or to honor his contractual and statutory obligations to reclaim the site.

48. Therefore, the Board should authorize the Division to complete reclamation at the Mayfield/B&H Quarry.

PRAYER FOR RELIEF

WHEREFORE, the Division respectfully requests that the Board enter an Order:

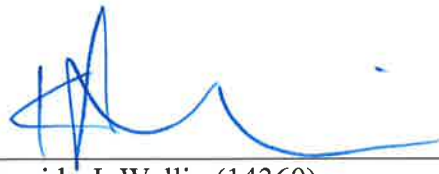
(1) Withdrawing Notice of Intention S/039/0020 due to the failure of Mr. Haas to either provide an increased reclamation surety or satisfactorily perform reclamation of the Mayfield/B&H Quarry;

(2) Declaring Mr. Haas's reclamation surety for the Mayfield/B&H Quarry forfeited to the Division, specifically the deposit totaling \$10,000.00, plus interest, held by the State of Utah for the benefit of the Division at Zion's First National Bank, Account No. 8912020;

(3) Authorizing the Division to complete reclamation work at the Mayfield/B&H Quarry; and

(4) Granting such further relief as the Board may deem just and equitable under the circumstances.

Dated this 15 day of October 2013.



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CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the forgoing Notice of Agency Action to be personally served, mailed first class mail postage prepaid, or electronically mailed the 28th day of October 2013, to:

BRYCE HAAS

91 South 100 East
Mayfield, Utah 84643

BILL CHRISTIANSEN

P.O. Box 82
Mayfield, Utah 84643

MIKE JOHNSON

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ZION'S FIRST NATIONAL BANK

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